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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1076

PHOENIX FINANCE CORPORATION, A DELAWARE CORPORATION,

Petitioner,

vs.

IOWA-WISCONSIN BRIDGE COMPANY, A DELAWARE CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA AND BRIEF IN SUPPORT THEREOF.

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Counsel for Petitioner.

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IOWA-WISCONSIN BRIDGE COMPANY, A DELAWARE CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Phoenix Finance Corporation, respectfully asks that a writ of certiorari be issued directed to the Supreme Court of Iowa for the review of the judgment of that court which was made finally effective by denial of a petition for rehearing on January 11, 1946. The judgment of the Supreme Court of Iowa affirmed (as to the cause of action here under consideration) a judgment of the District Court for Allamakee County, Iowa, dismissing a petition for mortgage foreclosure under a defense of *res adjudicata.*

A certified transcript of the record in the case below has been filed.[1]

I

Summary Statement of Matter Involved[2]

Phoenix[2a] holds a $50,000 note secured by mortgage on Bridge Company property in Iowa. This mortgage was also, by its terms, security for further advances which had been made for Bridge Company's account. After the mortgage and note were given and the subsequent advances made, the mortgage debts were surrendered by Phoenix for Bridge Company bonds, part of a $200,000 issue, which were secured by a mortgage trust indenture on Bridge Company property. The named trustees in the indenture were a bank (an Iowa corporation) and an individual (a Wisconsin resident). The surrender by Phoenix of the $50,000 mortgage was coupled with an agreement with Bridge Company that if the validity of the bonds accepted in exchange therefor, were attacked, the $50,000 mortgage and the debts it secured should be reinstated as valid and subsisting obligations.

The validity of the entire $200,000 bond issue was subsequently attacked both by the Bridge Company and by an intervening stockholder in a foreclosure action in the federal district court in Iowa, instituted by the trustee-

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[1] The Record in this cause is complex and (through no fault of petitioners) unnecessarily prolix. For the assistance of the Court the following explanation is supplied: Pages 1 to 261, cited with the prefix "R," comprise the printed record in the Iowa Supreme Court from the court below. Duplicate pagination occurs because of the inclusion, as an exhibit, of 6 volumes of the printed record in the federal foreclosure cause, herein extensively cited. Pages 1 to 1718, cited with the prefix "F. R.," are references to that exhibit. Page references subsequent to p. 1718 and comprising other exhibits and the proceedings in the Iowa Supreme Court, are herein also cited with the prefix "R."

[2] See "Statement of this Case," *post*, p. 10 for complete record references.

[2a] For convenience and brevity petitioner will be herein designated as "Phoenix" and respondent as "Bridge Company."

mortgagees under the indenture securing the $200,000 bond issue. That action was in the federal court by reason of diversity (Iowa corporation and Wisconsin resident against Bridge Company, a Delaware corporation).

The decree in the federal foreclosure cause denied foreclosure and held that all except a very few bonds were invalidly issued. Those invalidated included the bonds accepted by Phoenix upon surrender of the $50,000 mortgage and debt.

After the bill in the federal foreclosure cause was filed and the Bridge Company had answered, Phoenix (a Delaware Corporation) was involuntarily brought into the case by order on motion of an intervener, who prayed for the cancellation of Phoenix' bonds. The order purported to make Phoenix a party *plaintiff* in the principal cause and a party *defendant* to the intervention petition (a cross-complaint) for cancellation.

Phoenix took no part as a litigating party in the trial of the federal foreclosure cause, and the issue of cancellation of bonds was not pressed or decided. On motion for rehearing raising the jurisdictional question, the court held that Phoenix was only a "nominal or formal" party; that the trustee-plaintiffs were the only indispensable parties; and that federal jurisdiction had not been ousted by the injection of Phoenix as a party. Affirmed, C. C. A. 8th; certiorari denied, Supreme Court U. S.

In the case below Phoenix sued in the Iowa State Court on the reinstated $50,000 mortgage. The defense was *res adjudicata* bottomed upon the federal foreclosure decree denying foreclosure of the trust indenture. The Iowa district court sustained the plea, the Supreme Court of Iowa affirmed and denied rehearing, whereupon this petition for certiorari is presented.

The question, thus decided adversely to Phoenix and which this court is asked to review is—does the decree in

the federal foreclosure operate as an adjudication against Phoenix

(a) where Phoenix was not an actual party thereto to support a decree *in personam;*

(b) where Phoenix, as an adversary party to Bridge Company in respect of any issue in the cause, would have destroyed federal jurisdiction based upon diversity; and

(c) where the Trustee-Mortgagees had no authority in fact to represent Phoenix, a bondholder, with respect to any of the issues raised in the subsequent proceeding?

II

Statement of Supreme Court's Jurisdiction to Review Decree of the Supreme Court of Iowa

Jurisdiction is invoked under Section 237(b) of the Federal Judicial Code as amended (28 U. S. C. Sec. 344(b)). Although judicial proceedings of a Federal Court are not within the express coverage of the full faith and credit clause, they "must be accorded the same full faith and credit by state courts as would be required in respect of the judicial proceedings of another State." *Knights of Pythias* v. *Meyer,* 265 U. S. 30, 33; *Hancock Natl. Bank* v. *Farnum,* 176 U. S. 640, 644; *Embry* v. *Palmer,* 107 U. S. 3, 9.

Where in a State court a right of immunity is set up by virtue of a judgment or decree of a federal court the case is "one in which a title or right is claimed under an authority exercised under the United States" within the meaning of Section 237(b). *Knights of Pythias* v. *Meyers, supra; Cumberland Glass Mfg. Co.* v. *DeWitt,* 237 U. S. 447, 449; *Pittsburgh C. C. & St. L. Ry. Co.* v. *Long Island Loan & Trust Co.* 172 U. S. 493, 507.

Moreover this court has jurisdiction of the question here presented because of a "right, privilege or immunity" claimed by petitioner "under the Constitution," viz., the due process clause of the 14th Amendment. Where a judgment or decree lacks the qualities to entitle it to full faith and credit "judicial action enforcing it * * * is not that due process which the Fifth and Fourteenth Amendments require." *Hansberry* v. *Lee,* 311 U. S. 32; *Postal Tel. Cable Co.* v. *Newport,* 247 U. S. 464; *Old Wayne Mut. Life Asso.* v. *McDonough,* 204 U. S. 8.

III

The Questions Presented

In the broad aspect of the problem here presented, it may be said that the narrow question is: Shall the United States Supreme Court give recognition to the limitations on the principle of trustee representation stated in *Mackay* v. *Randolph Macon Coal Company* (8th Cir.), 178 F. 881? More specifically—(1) Does the trustee of an indenture securing a bond issue, represent a bondholder to litigate the validity of considerations for debts secured by a prior mortgage which had been exchanged for bonds (absent express or clearly implied authority in the trust indenture) where the status of such bondholder as a party to a foreclosure action brought by the trustee would have destroyed federal jurisdiction based upon diversity?

(2) Is an adjudication adverse to such a trustee on the obligor's promise, *to the trustee,* to pay the bonds, as contained in the trust indenture, *res adjudicata* with respect to the obligor's express and implied promises, *to its creditor* (a subsequent bondholder), to repay loans and advances which had become merged in later issued bonds under an agreement that the prior indebtedness should be reinstated, if the validity of the bonds were attacked?

(3) In such case, is the obligor's promise to the trustee in the trust indenture and the cause of action thereon, separate and distinct (a) from the obligor's promises to bondholders, as evidenced by the bonds, and the causes of action thereon, and (b) from the even more remote promises to a creditor, who later became a bondholder, to repay certain loans and advances, and the causes of action thereon?

(4) Where, in a foreclosure action brought in the federal court by such trustee-mortgagees, the bondholder (the earlier contract creditor) is brought in as a party to a cross-complaint for cancellation of bonds, as to which issue no federal jurisdiction existed, and which separate issue was not the subject of judgment or decree, was the impleaded bondholder such a party to the issue of mortgage foreclosure as will support a decree *in personam* against it on the underlying debts?

(5) Where such bondholder later sued on the reinstated contract debts in a state court, may the decree denying foreclosure because of invalidity of bonds, be asserted as *res adjudicata* of the causes of action based upon such debts?

(6) Where such defense of *res adjudicata* is sustained by a state court, has such litigating party been denied due process with respect to its right to assert its choses in action?

IV

Reasons Relied upon for Allowance of Writ

There is here involved a substantial federal question of due process under the 14th Amendment by reason of the according of supposed full faith and credit to a decree of a federal court to support a plea of *res adjudicata* in a subsequent state court proceeding in which a plaintiff (a)

who had not been either an actual or represented party in the prior federal cause (b) sues upon different causes of action.

It is submitted that in the exercise of the judicial discretion reposed in the Supreme Court to grant the writ here prayed there are the following impelling reasons related to the above essential question:

1. The Supreme Court of Iowa has decided the questions presented in direct conflict with a controlling decision of the United States Circuit Court of Appeals for the Eighth Circuit in *Mackay* v. *Randolph Macon Coal Co.*, 178 Fed. 881. Robertson and Kirkham's Jurisdiction in the Supreme Court of the United States, Sec. 298, p. 597, Sec. 341, page 697.

2. The Supreme Court of Iowa has decided federal questions of substance not heretofore directly determined by the United States Supreme Court, Rule 38, 5(a).

3. The Supreme Court of Iowa decided federal questions of substance in a way not in accord with the reasoning contained in and analogies to be drawn from the applicable decisions of the United States Supreme Court on trustee representation generally. Rule 38, 5(a).

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued to the Supreme Court of Iowa.

PHOENIX FINANCE CORPORATION,
By JAMES R. MORFORD,
Its Attorney.